Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 02-6

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

***Ex Parte* Comments**

Further Notice of Proposed Rule-Making Adopted April 26, 2001

Introduction

Funds For Learning, LLC, is an educational technology consulting firm that has focused its practice on the E-rate program since the program's inception in 1997. We work with schools and libraries, providing a wide range of services, including assistance with application preparation, the processing of payment-related paperwork, and support through the post-commitment auditing process. In addition, we provide a variety of independent consulting services to help companies understand the program's rules and requirements and communicate them within their organizations and to their customers. We were privileged to participate in the Federal Communications Commission's May

2003 Forum on the E-rate program and the Schools and Libraries Division's Task Force on the Prevention of Waste, Fraud and Abuse.

In April 2001, the Commission solicited comments on a proposal to change the rules of the E-rate program so that program participants could qualify for internal connections support on an every-other-year basis. While many program stakeholders agreed that it might be necessary to adjust the program's funding mechanism to promote the program's policy goals more effectively, stakeholders strongly recommended that the Commission refrain from making such a sweeping change in the middle of an application year, after applicants had completed their technology planning and submitted their funding requests. Ultimately, the Commission agreed not to impose that change on requests for Funding Year 2001.

Recently, we have heard both Commission and congressional staff members endorse this approach, suggesting it was still under active consideration. As a result, we feel compelled to restate why we believe that this approach is a short-sighted one that will only create the potential for new program loopholes as well as marketplace and technology planning anomalies that will need to be corrected in the future.

Discussion

In its 2001 Notice, the Commission described its proposal this way: "For both shared services and site-specific services, the Administrator would examine each application to determine which individual sites within that application had not received funding for internal connections in the prior funding year. These individual sites would be funded in order of discount level."

On its face, this approach sounds simple. If a school qualifies for a new server this year, it has to wait a year before it can apply for more internal connections. However, we believe that in practice, this approach will lead to many unanticipated problems:

- Low-income districts that have signed multi-year contracts to maintain the networks built with E-rate discounts could lose access to discounts for those services every other year, or would have to choose to apply for only 50 percent (half of the schools) of the dollars to which they were entitled. At a time when many more applicants are being asked to demonstrate that they have the "necessary resources" in place to use E-rate discounts appropriately and effectively, this kind of change could prove problematic.

- Schools or libraries that have been included on the applications of larger organizations (districts, intermediate units, regional consortia or statewide applications) might lose access to funding. Alternatively, applicants might be able to develop ways to "game" the system by organizing consortia through which the requests could be funneled.

- Because the internal connections category covers such a wide variety of products and services, there would be no distinction made between the legitimate needs of a school that applied for discounts on an eligible Uninterruptible Power Supply versus a school that applied for discounts for a million-dollar network. Each would have to wait two years before qualifying for more internal connections funding.

- The approach encourages schools to abandon good practices for budgeting and technology implementation—namely, to plan on incremental improvements each year and include technology expenditures as a regular part of their operating budget. The proposal could penalize small school districts, or single schools by limiting the advances they could make in their "off" years.

- Alternatively, this approach could encourage districts to simply ask for twice as much for the schools in their "on" years, knowing they will have to wait two years before they are funded again. If so, this policy change will do nothing to address some of the market distortions that current program rules may encourage and that may, in fact, make the program more vulnerable to waste, fraud and abuse.

Further the Commission would need to clarify whether this restriction would be imposed when applicants request funding, when their funding is approved or when they actually use their discounts. Because history has shown that it is difficult for the SLD to review and approve all internal connections requests on a timely basis, it may be difficult for the SLD to implement this proposal unless applicants know upfront that they cannot apply in a particular year. However, the applicant may not know where it stands if its applications for the previous funding year have not yet been reviewed. For instance, as of late October 2003, one week before the start of the Funding Year 2004 filing window, the SLD has still not rendered a decision on $284 million worth of 2002 internal connections requests, much less $2.046 billion worth of requests for 2003. (How would applicants eligible for discount rates of between 70 percent and 85 percent for the 2003 Funding Year be expected to complete an application for the 2004 Funding Year at this point?)

It is possible that the Commission is aware of these issues and has determined ways that they could be addressed. Nevertheless, we believe it is significant that this proposal was *not* among the draft recommendations of the SLD's Task Force on the Prevention of Waste, Fraud and Abuse. We cannot speak on behalf of the task force. However, from our own perspective we believe that many stakeholders who work with the program on a day-to-day basis consider the "every other year" proposal to be a quick-fix Band-aid that will further distort technology planning and purchasing decisions in new ways beyond those that may be the result of a system under which purchasers are required to contribute only 10 percent of the purchase price.

We encourage the Commission to issue a Notice of Proposed Rule-Making that would give all program stakeholders the opportunity to comment on the pros and cons of the various approaches that have been suggested with a goal of implementing any changes by no later than late summer-early fall of 2004, the start of the planning cycle for

Funding Year 2005.. This would give program stakeholders who are well versed in the program's nitty-gritty details an opportunity to provide thoughtful comments and permit the Commission to implement changes in a way that would give program participants ample opportunity to plan for any changes that would impact their access to their E-rate discounts.

Sincerely,

Funds For Learning, LLC

Orin Heend, President
Sara Fitzgerald, Vice President
John Harrington, Vice President